

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff.

v.

HELENA CHEMICAL COMPANY
Defendant.

Civil Action No. _____

Judge _____

CONSENT DECREE

**CERCLA SECTION 107 CONSENT DECREE
FOR REIMBURSEMENT OF PAST RESPONSE COSTS
AND FUTURE RESPONSE COSTS
AT THE
HELENA CHEMICAL SUPERFUND SITE
IN TAMPA, HILLSBOROUGH COUNTY, FLORIDA
AND THE
HELENA CHEMICAL SUPERFUND SITE
IN FAIRFAX, ALLENDALE COUNTY, SOUTH CAROLINA**

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UNITED STATES OF AMERICA.

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I. BACKGROUND

On May 7, 1996, EPA issued a Record of Decision ("ROD") for the Tampa Site. On September 8, 1993, EPA issued a ROD for the Fairfax Site, with Amendments dated September 1, 1995 and February 11, 1999. On December 10, 1996 and May 24, 1994, respectively, EPA issued to Helena Chemical Company two separate Unilateral Administrative Orders ("UAOs"), pursuant to Section 106 of CERCLA, for the performance of Remedial Design/Remedial Action ("RD/RA") for the Tampa Site and the Fairfax Site. The UAOs, Scopes of Work, and amendments to the same, which are attached to and included as part of the UAOs, are attached to this Consent Decree in Appendix B.

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The Settling Defendant has completed the RI/FS for the Tampa Site, and has completed part of the RD and RA at the Tampa Site as of the date of entry of this Consent Decree.

C. In performing response actions at the Sites, including oversight of the RD/RAs, EPA has incurred Past Response Costs in response to a release or threatened release of hazardous substances at and from the Sites, and will continue to incur such costs.

D. Settling Defendant has paid to EPA \$330,387.88 as reimbursement for EPA's Past Response Costs incurred at the Fairfax Site. Settling Defendant has paid to EPA \$340,930.13 as reimbursement for EPA's Past Response Costs incurred at the Tampa Site.

E. The purpose of this Consent Decree is as follows:

1. To reach a final settlement among the Parties with respect to the Sites that allows the Settling Defendant to make a cash payment to resolve its alleged civil liability under CERCLA, 42 U.S.C. §§ 9601 et seq., for Past Response Costs incurred at or in connection with the Sites;
2. To provide for the continued payment by Settling Defendant of EPA's Future Response Costs; and
3. To provide for contribution protection for the Settling Defendant with regard to the Sites pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

F. EPA alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for the costs of responding to a release or threatened release of hazardous substances at each of the Sites.

G. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint, simultaneously with the lodging of this Consent Decree, in this matter pursuant to CERCLA, 42 U.S.C. § 9607, seeking reimbursement of response costs incurred and to be incurred by the United States for response actions taken at or in connection with the release or threatened release of hazardous substances at the Sites.

H. Settling Defendant does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

I. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,

AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and its agencies, departments, and instrumentalities, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendices attached hereto, the following definitions shall apply:

a. "AOCs" shall mean the Administrative Orders by Consent, as amended, for RI/FS entered into by and between EPA and Helena for the Sites issued on September 2, 1992, with a Modification dated November 6, 1992, and a Second Modification signed on November 19, 1993 for the Tampa Site, and on April 12, 1989, with an Amendment issued on October 10, 1991 for the Fairfax Site. The AOCs, with the Modifications/Amendments to the same, are attached hereto for reference only as Appendix A.

b. "Balance" shall mean the amount of \$998,500.00 United States Dollars less any payments for Past Response Costs made by the Settling Defendant to the United States after Entry of this Consent Decree.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

d. "Certified Cost Summary" shall mean an itemized Superfund Cost Recovery Package Imaging and On-Line System ("SCORPIOS") report which has been reviewed against supporting documentation to confirm its accuracy.

e. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

f. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

i. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. "Entry" shall mean the date upon which the Consent Decree is entered on the docket of the United States District Court as a final judgment. Entry shall not mean the date of lodging of this Consent Decree with the United States District Court.

k. "Fairfax Site" shall mean the Helena Chemical Company Superfund Site, encompassing approximately 13.5 acres, located on Highway 321 South, approximately one (1) mile south of Fairfax, Allendale County, South Carolina, and depicted more clearly on the map and legal description included in Appendix C.

l. "Future Response Costs" shall mean all Response Costs not inconsistent with the NCP, including but not limited to, direct and indirect costs, that the United States incurs at or in connection with the Sites on or after the dates set forth in the last two sentences of this Paragraph 3.l. in reviewing or developing plans, reports or other items pursuant to this Consent Decree, the UAOs, and the SOWs, verifying the compliance with this Consent Decree, the UAOs and the SOWs, or otherwise implementing, overseeing, or enforcing this Consent Decree, the UAOs, and the SOWs, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to either of the Sites, conducting response actions pursuant to the UAOs, performing Periodic Reviews pursuant to the UAOs, and all Interest on those Past Response Costs Settling Defendant has agreed to reimburse under this Consent Decree that has accrued through the date of payment of a specific amount under this Consent Decree pursuant to Section V (Reimbursement of Response Costs). For the purposes of this Consent Decree, Future Response Costs at the Tampa Site will include costs incurred by the United States beginning on August 28, 2000 for Regional Payroll Costs and on October 28, 2000 for all other Future Response Costs. For purposes of this Consent Decree, Future Response Costs at the Fairfax Site will include costs incurred by the United States beginning on January 19, 2000.

m. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹

n. "Matters Addressed in the Settlement" shall mean all Past Response Costs and Future Response Costs incurred by the United States at or in connection with the Sites, and the payment by the Settling Defendant of the Past Response Costs and Future Response Costs, and all other actions required under this Consent Decree.

o. "National Contingency Plan" (NCP) shall mean the national contingency plan as defined in Section 101(31) of CERCLA, 42 U.S.C. § 9601(31).

p. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

q. "Parties" shall mean the United States and the Settling Defendant.

r. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States has incurred and/or paid at or in connection with both: 1) the Tampa Site prior to August 28, 2000 for Regional Payroll Costs and prior to October 28, 2000 for all other costs; and 2) the Fairfax Site prior to January 19, 2000, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a).

s. "Plaintiff" shall mean the United States.

t. "RD/RA" shall mean CERCLA remedial design and remedial action.

u. "RI/FS" shall mean CERCLA remedial investigation and feasibility study.

v. "ROD" shall mean CERCLA Record of Decision.

w. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

x. "SCORPIOS Report" shall mean a report generated by the Superfund Cost Recovery Package Imaging and Online System. This report shall include itemized summaries of

¹ The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.

EPA payroll, travel, indirect costs, and contractor costs related to the relevant Site.

y. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

z. "Settling Defendant" shall mean Helena Chemical Company.

aa. "Sites" shall mean the Tampa Site and the Fairfax Site.

bb. "Tampa Site" shall mean the Helena Chemical Company Superfund Site, encompassing approximately 8 acres, located at 2405 North 71st Street in Tampa, Hillsborough County, Florida and depicted more clearly on the map and legal description included in Appendix D.

cc. "UAOs" shall mean the Unilateral Administrative Orders for Remedial Design and Remedial Action for the Sites issued on December 10, 1996 for the Tampa Site and on May 24, 1994 for the Fairfax Site. The UAOs are attached hereto for reference only as Appendix B.

dd. "United States" shall mean the United States of America, including it departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Settling Defendant has agreed to pay the United States a total of Nine Hundred Ninety Eight, Five Hundred Thousand U.S. Dollars (\$998,500.00), plus Interest on the Balance calculated for each payment from the date thirty days after Entry of this Consent Decree through the date of each payment, in reimbursement of Past Response Costs in accordance with the following payment schedule.

a. Initial Payment - Within thirty days of Entry of this Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund an initial payment of \$250,000.00 of which sum EPA shall allocate \$200,000.00 to the Fairfax Site and \$50,000.00 to the Tampa Site.

b. Payments After Initial Payment

(1) Within one-hundred eighty days of Entry of this Consent Decree, Settling Defendant shall pay a second payment of \$250,000.00, plus Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of this payment made to the United States by the Settling Defendant. Of this second payment, EPA will first allocate an amount which will equal the remaining balance of Past Response Costs for the Fairfax Site. EPA will then allocate the remainder of this payment to the Tampa Site. EPA will allocate all

remaining payments for Past Response Costs by the Settling Defendant, as described below, to the Tampa Site.

(2) Within two hundred and seventy days of the Entry of this Consent Decree, Settling Defendant shall pay a third payment of \$99,700.00, plus Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of this payment made to the United States by the Settling Defendant.

(3) Within three hundred and sixty days of Entry of this Consent Decree, Settling Defendant shall pay a fourth payment of \$99,700.00, plus Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of this payment made to the United States by the Settling Defendant.

(4) Within four hundred and fifty days of Entry of this Consent Decree, Settling Defendant shall pay a fifth payment of \$99,700.00, plus Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of this payment made to the United States by the Settling Defendant.

(5) Within five hundred and forty days of Entry of this Consent Decree, Settling Defendant shall pay a sixth payment of \$99,700.00, plus Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of this payment made to the United States by the Settling Defendant.

(6) Within six hundred and thirty days of Entry of this Consent Decree, Settling Defendant shall pay a seventh and final payment of \$99,700.00, plus Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of this last payment made to the United States by the Settling Defendant.

This monetary payment total (\$998,500 plus Interest on the Balance calculated for each payment from the date thirty days after Entry of this Consent Decree through the date of each payment) shall constitute a full and final satisfaction of all Past Response Costs incurred by the United States with respect to or in connection with the Sites. Settling Defendant may, in its discretion, accelerate the payments or pay the entire Past Response Cost Balance at any time prior to the second anniversary of Entry of this Consent Decree, in which case Settling Defendant shall pay only that Interest on the Balance calculated from the date thirty days after Entry of this Consent Decree through the date of the accelerated or full payment.

Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number (to be supplied by EPA at the time of payment), the EPA Region and Site Spill ID Numbers 04IW (Fairfax Site) and 04DR (Tampa Site), and DOJ Case Number #90-11-3-07316 (Fairfax Site) and #90-11-3-07316 (Tampa Site). Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the District of South Carolina following lodging of the Consent Decree. Any payments received by the

Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XIV (Notices and Submissions) and to:

Paula V. Batchelor
Environmental Protection Specialist
Superfund Enforcement and Information Branch
Waste Management Division
US EPA Region IV
61 Forsyth Street, S.W.
Atlanta, GA 30303

All payments which are allocated to the Tampa Site shall be deposited in the Helena Chemical Site (Tampa, FL) Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Tampa Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. Payments for Future Response Costs.

a. Settling Defendant has agreed to pay the United States reimbursement for Future Response Costs consistent with the terms of this Section. EPA shall endeavor, on a yearly basis, to send Settling Defendant a bill for each Site for Future Response Costs incurred and paid by the United States at the Fairfax Site and the Tampa Site. Said bill shall include an accounting of Future Response Costs incurred by the United States with respect to the this Consent Decree. This accounting will include an updated certified cost summary report (currently the SCORPIOS Report) which reflects Future Response Costs incurred by the United States, and also will include a DOJ cost summary if DOJ attorney's fees are included in the bill.

With regard to the reimbursement of Future Response Costs which have accrued at the Tampa Site beginning on August 28, 2000 through April 30, 2004 for Regional Payroll Costs and on October 28, 2000 through April 30, 2004 for all other Future Response Costs, and at the Fairfax Site beginning on January 19, 2000 through April 30, 2004, the Parties have agreed that Helena may use a payment plan over a three year period which would begin within thirty (30) days of entry of this Consent Decree. Any payments made pursuant to such payment plan also will include Interest calculated on the balance from the date thirty days after receipt of the bill.

Settling Defendant also may, in its discretion, request in writing that EPA produce certain unredacted work-performed documents relating to the Future Response Costs incurred by the United States. To the extent available, EPA will produce the unredacted work-performed documents, pursuant to the Confidentiality Agreements executed by Settling Defendant as of January 18, 2001 for the Tampa Site, and as of April 5, 2001 for the Fairfax Site. (These Confidentiality Agreements are attached hereto as Appendix E.) If the requested work-performed documents are generated by contractors not listed in the Appendix of the respective

Confidentiality Agreements, then that list will be amended to reflect the new contractor and the Confidentiality Agreement re-executed. Interest shall continue to accrue during the time period the Agency is gathering the additional documentation.

Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment or of receipt of additional documentation, except as otherwise provided in Subparagraph 5(c). Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Numbers 041W (Fairfax Site) and 04DR (Tampa Site), and DOJ Case Number #90-11-3-07316 (Fairfax Site) and #90-11-3-07316 (Tampa Site). Settling Defendant shall send the check(s) to:

U.S. EPA - Region IV
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384
Attention: Collection Officer Superfund

All payments which are allocated to the Tampa Site shall be deposited in the Helena Chemical Site (Tampa, FL) Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Tampa Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XIV (Notices and Submissions) and to:

Paula V. Batchelor
Environmental Protection Specialist
Superfund Enforcement and Information Branch
Waste Management Division
US EPA Region IV
61 Forsyth Street, S.W.
Atlanta, GA 30303

c. Settling Defendant may contest payment of any Future Response Costs under Paragraph 5 if Settling Defendant determines that the United States has made an accounting error, or if Settling Defendants alleges that a cost item that is included represents costs that are inconsistent with the NCP or represents costs not within the definition of Future Response Costs. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XIV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection.

d. In the event of an objection, the Settling Defendant shall within the 30-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 5. Simultaneously, the Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Tennessee and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XIV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section VII (Dispute Resolution). If the United States prevails in the dispute, which includes judicial appeal to this Court and all appeals thereafter, within 10 days after receipt of the final court's decision or, if the decision is not timely appealed in the first instance, within 10 days of EPA's final administrative decision, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 5. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 5. To the extent that any amounts are determined not to be owed, the remainder of the escrow account shall be disbursed to Settling Defendant. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. **Interest on Late Payments.** In the event that the payments required by Paragraph 4 are not made within the due dates established in Paragraphs 4.a. and 4.b., or that the payments required by Paragraph 5 are not made within 30 days of the Settling Defendant's receipt of the bill or within 30 days of receipt of additional documentation, if requested, Settling Defendant shall pay Interest on the unpaid balance. The Interest on Past Costs shall begin to accrue 30 days after Entry of this Consent Decree, and the Interest on Future Response Costs shall begin to accrue 30 days after the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 7. The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 5.

7. Stipulated Penalty.

a. If any amounts due to the United States under this Consent Decree are not paid by the required date or paid into escrow in accordance with Paragraph 5.d., Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraphs 4 and 6, the following stipulated penalties which shall accrue per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 30 th day
\$1000	31 st day and beyond

b. If Settling Defendant does not comply with Section XI (Site Access) or Section XII (Access to Information), Settling Defendant shall pay to EPA, as a stipulated penalty, \$1,000.00 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days of Settling Defendant's receipt from EPA of the written demand for payment of the penalties. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. EPA - Region IV
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384
Attention: Collection Officer Superfund

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Numbers 041W (Fairfax Site) and 04DR (Tampa Site), USAO File Number (to be supplied by EPA at the time of payment) and DOJ Case Number #90-11-3-07316 (Fairfax Site) and #90-11-3-07316 (Tampa Site). Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XIV (Notices and Submissions) and to:

Paula V. Batchelor
Environmental Protection Specialist
Superfund Enforcement and Information Branch
Waste Management Division
US EPA Region IV
61 Forsyth Street, S.W.
Atlanta, GA 30303

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a written demand for payment, but need

only be paid upon written demand. All penalties shall begin to accrue from the first day of noncompliance with any applicable provision of this Consent Decree, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. Payments made under Paragraphs 6-7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

9. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. DISPUTE RESOLUTION

11. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

12. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

13. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon

by the Settling Defendant.

b. Within 30 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 15 days after receipt of EPA's Statement of Position, Settling Defendant may submit a written Reply.

14. Formal dispute resolution. Disputes which can not be resolved by informal negotiations pursuant to Paragraph 13 shall be governed by this Paragraph.

a. Following receipt of the Parties' Statements of Position, which may include a Written Reply by Settling Defendant, submitted pursuant to Paragraph 13, the Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

15. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 16. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 16.

16. Stipulated penalties shall continue to accrue as provided in Paragraph 7 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in

Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

17. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 7 or Paragraph 16, whichever is applicable.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

18. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 19 (Reservation of Rights by United States), the United States covenants not to sue or take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs or Future Response Costs. This covenant shall take effect as to Past Response Costs upon receipt by the United States of all amounts required by Paragraph 4 of Section V (Reimbursement of Response Costs), Paragraphs 6 (Interest on Late Payments) and 7 (Stipulated Penalties for Late Payments) of Section VI, and Section VII (Dispute Resolution). This covenant shall take effect as to Future Response Costs upon receipt by the United States of all amounts required by Paragraph 5 of Section V (Reimbursement of Response Costs), Paragraphs 6 (Interest on Late Payments) and 7 (Stipulated Penalties for Late Payments) of Section VI, and Section VII (Dispute Resolution). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

19. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 18 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c. criminal liability;

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Response Costs.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

20. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, for Response Costs incurred by either the United States or Settling Defendant with respect to the Fairfax Site and /or the Tampa Site, including but not limited to:

a. any direct or indirect claim against the United States for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law,

b. any claim against the United States, including any department, agency, or instrumentality of the United States, pursuant to CERCLA Sections 107 or 113 related to Past Response Costs or Future Response Costs; and

c. any claim arising out of the response actions at or in connection with the Tampa Site or the Fairfax Site, including any claim under the United States Constitution, the Constitution of the State of South Carolina, the Constitution of the State of Florida, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

21. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or

40 C.F.R. 300.700(d).

23. Notwithstanding any other provision in this Consent Decree to the contrary, Settling Defendant does not compromise, waive, covenant not to sue or release any claims Settling Defendant may have, under CERCLA Section 106(b)(2), 42 U.S.C. § 9606(b)(2), or under other applicable law, against any person, or any Party to this Consent Decree, for Response Costs, costs, damages and attorneys fees paid, where such Response Costs, costs, damages and attorney fees (1) are paid or incurred or suffered subsequent to the date of entry of this Consent Decree, (2) arise out of releases or threatened releases of hazardous substances, pollutants or contaminants at, on or from the Alaric Superfund Site, 2110 North 71st Street, Tampa, Hillsborough County, FL, and (3) are shown to be divisible from those costs incurred from remedial responses related to releases or threatened releases of hazardous substances, pollutants or contaminants generated at or on Settling Defendant's Tampa Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Tampa Site and/or the Fairfax Site against any person not a Party hereto.

25. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "Matters Addressed in this Settlement" as defined in Section IV (Definitions) of this Consent Decree.

26. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other relief relating to the Fairfax and/or Tampa Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XI. SITE ACCESS

28. Commencing upon the date of lodging of this Consent Decree, Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Tampa Site and to the Fairfax Site and to any other property owned or controlled by Settling Defendant to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Sites, including but not limited to:

- a. Monitoring of investigation, removal, remedial or other activities at the Tampa Site and/or the Fairfax Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Tampa Site and/or the Fairfax Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Tampa and/or the Fairfax Site; and
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XII (Access to Information).
- g. Assessing Settling Defendant's compliance with this Consent Decree.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

30. Notice of Obligations to Successors-in-Title.

a. Within 15 days after entry of this Consent Decree, Settling Defendant shall record a certified copy of this Consent Decree or a notice of the entry of this Consent Decree with the Recorder's Office or Registry of Deeds or other appropriate office, Hillsborough County, State of Florida and with the Recorder's Office, Allendale County, State of South Carolina. Thereafter, each deed, title, or other instrument conveying an interest in property included in either the Tampa Site or the Fairfax Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the Court where a copy of the Consent Decree can be located and reviewed.

b. The obligations of Settling Defendant with respect to the provision of access under Section XI (Site Access) shall be binding upon any and all persons who subsequently

acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, Settling Defendant shall record at the Recorder's Office for the Tampa Site and for the Fairfax Site, (or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property) a notice of obligation to provide access under Section XI (Site Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in either the Tampa Site or the Fairfax Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Settling Defendant shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In no event shall any such conveyance, release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of the United States.

XII. ACCESS TO INFORMATION

31. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Tampa Site, the Fairfax Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Tampa Site or the Fairfax Site.

32. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree with the United States shall be withheld on the grounds that they are privileged.

If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Tampa Site or the Fairfax Site.

XIII. RETENTION OF RECORDS

34. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain one copy of all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Tampa Site or the Fairfax Site or the liability of any person for response actions conducted and to be conducted at the Sites, regardless of any corporate retention policy to the contrary.

35. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

36. Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XIV. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

For DOJ:

Bruce Gelber
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DOJ #90-11-3-07316 / Fairfax Site)
P.O. Box 7611
Washington, D.C. 20044-7611

Quentin Pair
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DOJ #90-11-3-07316 / Fairfax Site) P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-1999
(202) 514-2583(fax)

For EPA:

Winston Smith
Director, Waste Management Division
U.S. Environmental Protection Agency-Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Mary C. Johnson
Associate Regional Counsel
Environmental Accountability Section
U.S. Environmental Protection Agency-Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9526
(404) 562-9487 (fax)

As to Settling Defendant:

Edward B. Brister, Director
Regulatory Affairs, Environment, Safety
& Health
Helena Chemical Company
225 Schilling Boulevard, Suite 300
Collierville, TN 38017
(901) 537-8600
(901) 821-9122 (fax)

and

David W. Hawkins, Director
Legal Department
Helena Chemical Company
225 Schilling Boulevard, Suite 300
Collierville, TN 38017
(901) 537-7270
(901) 537-8677 (fax)

and

Kim K. Burke
Taft, Stettinius & Hollister LLP
Suite 1800
425 Walnut Street
Cincinnati, Ohio 45202-3957
(513) 381-2838
(513) 381-0205 (fax)

XV. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION

39. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" includes the AOCs and the modifications/amendments to the same, for the Sites; "Appendix B" includes the UAOs, the Scopes of Work, and amendments to the same, for the Sites; "Appendix C" is the Fairfax Site map; "Appendix D" is the Tampa Site map; and

"Appendix E" includes the Confidentiality Agreements.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

41. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

42. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

43. The undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

44. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

45. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS ____ DAY OF _____, 2004.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Helena Chemical Company, relating to the Helena Chemical Company Superfund Site in Tampa Florida and the Helena Chemical Company Superfund Site in Fairfax, South Carolina.

FOR THE UNITED STATES OF AMERICA

Date: 3/21/05

BRUCE GELBER
Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
U.S. Department of Justice
Washington, D.C. 20530-000

STROM THURMOND, JR.
United States Attorney

Date: _____

ROBERT F. BAILEY, JR. Fed. ID # 6406
Assistant United States Attorney
United States Attorney Office
1st Union Bldg.
1441 Main Street Suite 500
Columbia, South Carolina

Date: 14 Mar 05

QUENTIN PAIR
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Helena Chemical Company, relating to the Helena Chemical Company Superfund Site in Tampa Florida and the Helena Chemical Company Superfund Site in Fairfax, South Carolina.

DATE: 10/29/04

Winston Smith
WINSTON SMITH

Director, Waste Management Division

U.S. Environmental Protection Agency-Region 4

61 Forsyth Street, S.W.

Atlanta, GA 30303-8960

DATE: 9/22/04

MARY C. JOHNSON

Associate Regional Counsel

U.S. Environmental Protection Agency - Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303-8960

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Helena Chemical Company, relating to the Helena Chemical Company Superfund Site in Tampa, Florida and the Helena Chemical Company Superfund Site in Fairfax, South Carolina.

FOR DEFENDANT
HELENA CHEMICAL COMPANY

Date: 9/20/04

MMA

By: WT BRASWELL
HELENA CHEMICAL COMPANY
PRINT NAME
V.P. TECHNICAL
PRINT TITLE

c/o Kim K. Burke
Taft, Stettinius & Hollister LLP
Suite 1800
425 Walnut Street
Cincinnati, Ohio 45202-3957